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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/937,794	02/20/2002	Isabelle Rebeaud	14926	7036

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EXAMINER

TRAN LIEN, THUY

ART UNIT	PAPER NUMBER
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1761

DATE MAILED: 09/20/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

09/937,794

Applicant(s)

REBEAUD, ISABELLE

Examiner

Lien T Tran

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 09 June 2004.
2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-10 is/are pending in the application.
4a) Of the above claim(s) 6 and 7 is/are withdrawn from consideration.
5) ☐ Claim(s) _____ is/are allowed.
6) ☒ Claim(s) 1-5 and 8-10 is/are rejected.
7) ☐ Claim(s) _____ is/are objected to.
8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☒ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
a) ☒ All b) ☐ Some * c) ☐ None of:
1. ☒ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. _____.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
3) ☒ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date _____.
4) ☐ Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____.
5) ☐ Notice of Informal Patent Application (PTO-152)
6) ☐ Other: _____.

Applicant's election with traverse of Group I claims 1-5 and 8-10 in the reply filed on 6/9/04 is acknowledged. The traversal is on the ground(s) that unity of invention is satisfied when there is a technical relationship among the claimed inventions involving one or more of the same corresponding features. This is not found persuasive because applicant does not point out what this technical relationship is. There is no technical relationship existing between the process and the device.

The requirement is still deemed proper and is therefore made FINAL.

Receipt is acknowledged of papers submitted under 35 U.S.C. 119(a)-(d), which papers have been placed of record in the file.

The specification does not contain a "Brief Description of the Drawing" which is required in all cases containing drawings.

Claims 1-5 and 8-10 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

In all relevant claims, the use of numbers in the parentheses is indefinite because feature in parentheses is not considered a limitation of the claim; if applicant intends for the numbers to be part of the claim, they should be taken out of parentheses.

In claim 1: Line 2, the term "pizza type" is indefinite because it is not clear what applicant intends by it; what does applicant mean by "pizza type". The use of "characterized in that" does not follow US practice; while it is not indefinite, it is suggested applicant use "consisting of the steps" to make the claim clearer.

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Line 8, the term "the various pizza ingredients" is unclear because it is not known what it is referring to; the claim has not set forth any pizza ingredient. The term "such as" renders the claim indefinite because it is unclear whether the limitations following the phrase are part of the claimed invention. See MPEP § 2173.05(d).

Line 9, the term "and the like" renders the claim(s) indefinite because the claim(s) include(s) elements not actually disclosed (those encompassed by "and the like"), thereby rendering the scope of the claim(s) unascertainable. See MPEP § 2173.05(d).

Line 10, what does "this dough" refer to? Line 12, what does "this oven" refer to; it is suggested applicant uses "said pizza oven" or "the pizza oven" to have proper antecedent basis. Line 16-17 are vague and indefinite; it is not clear how the lines are tied in with the rest of the claim; the structure claimed is not clear. Line 18, the term "the edge" is unclear because it is not known what edge applicant is referring to; the claim has not set forth any edge. Line 23, "the pouch" is unclear because the claim has not set forth any pouch.

Claim 4 essentially has the same problem as claim 1. Additionally, claim 4 is vague and indefinite because it does not positively recite the processing steps. Line 7, the term "for example" renders the claim indefinite because it is unclear whether the limitation(s) following the phrase are part of the claimed invention. See MPEP § 2173.05(d). Lines 15 and 22, the term "for example" has the same problem as line 7.

In claim 8: Line 1, the term "pizza type" has the same problem as in claim 1.

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In claim 9: Line 1, the term "pizza type" has the same problem as in claim 1. Line 6, "the lateral sides" are unclear because the claims have not set forth any lateral sides.

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

The factual inquiries set forth in *Graham v. John Deere Co.*, 383 U.S. 1, 148 USPQ 459 (1966), that are applied for establishing a background for determining obviousness under 35 U.S.C. 103(a) are summarized as follows:

1. Determining the scope and contents of the prior art.
2. Ascertaining the differences between the prior art and the claims at issue.
3. Resolving the level of ordinary skill in the pertinent art.
4. Considering objective evidence present in the application indicating obviousness or nonobviousness.

Claims 1-5 are rejected under 35 U.S.C. 103(a) as being unpatentable over Persi in view of Viviano et al.

Persi discloses a method of making a pizza food product. The method comprises the steps of shaping a dough into a rectangular shape, placing pizza ingredients along the central portion of the dough, folding the dough along its longitudinal length such that the long edges are in abutment, pressing the edges against each other so as to tight seal the ingredients and heating the filled dough product. The cooked product is packaged in suitable packaging material. (see columns 3-4)

Persi does not teach folding the dough after it is cooked and coating the edge with an edible paste of starch. Also, the Persi method comprises the additional step of forming a toroidal shape after folding the dough.

Viviano et al disclose a method of making filled food product. They teach to apply food starch to layer to help the dough regions to stick to each other. (see col. 6 lines 10-12)

It would have been obvious to one skilled in the art to omit the step of forming bringing the edges together to form a toroidal shape if one wants to make a rectangular shape product. Such step only affect the shape of the product and not the type of product. As to the folding after cooking, it is well known in the art to form pocket products by folding the dough over itself; this is commonly done when making calzone, turnover, pie etc. It is common to fold raw dough because it gives better sealing. However, cooked dough can also be folded. For example, when making wafer, or ice cream cone, the dough is shaped after it is cooked. The folding after cooking or before cooking gives the same product. In cooking, it is not uncommon to use alternative steps to make the same product. The cooking of the product in an open face manner gives the advantage that the filled ingredients will be cooked in a shorter amount of time because they are not enclosed within the dough shell. Thus, it would have been obvious to one skilled in the art to fold the dough after cooking if one wants to shorten the cooking time. It is well known that cooked dough will not stick to each other as well as raw dough; thus, it would have been obvious to one skilled in the art to use an adhesive when sealing a cooked dough. Starch is well known to be used as adhesive

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as shown by Viviano et al. As an alternative to starch, flour can also be used as adhesive because flour contains starch.

Claims 8-10 are rejected under 35 U.S.C. 103(a) as being unpatentable over Persi

Persi discloses a pizza food product. The product comprises a dough pocket formed by folding a raw dough with filling along its longitudinal length such that the long edges are in abutment with each other. The pizza pocket is then baked to form a cooked food product. (see columns 3-4)

Persi does not teach closing with a cordon of edible paste and forming the pouch in the hot state.

The forming of the fold in hot state and the closing with a cordon of edible paste are differences in processing steps which do not determined the patentability of the product. The Persi product is the same type of product claimed; it is a pizza product in the form of a pocket in which the filling is closed inside. It would have been obvious to one skilled in the art to use alternative steps in making any same type product. The product of Persi is the same as that claimed.

The prior art made of record and not relied upon is considered pertinent to applicant's disclosure.

Waller discloses pizza product formed on a stick.

Wadell discloses a method of folding food pieces.

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Any inquiry concerning this communication or earlier communications from the examiner should be directed to Lien T Tran whose telephone number is 571-272-1408.

The examiner can normally be reached on Tuesday, Wednesday and Friday.

The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

September 19, 2004


LIEN TRAN
PRIMARY EXAMINER
